

## VII. CREDIT REPORTING AND DEBT COLLECTION

### A. Consumer Credit Reporting Agencies Act (CC §§1785.1–1785.36)

#### 1. [§5.52] Scope of Act

The Consumer Credit Reporting Agencies Act (CC §§1785.1–1785.36) is designed to regulate agencies that report on consumer credit in California by ensuring that the information they issue for consumer credit, insurance, residence rental, or employment purposes is fair and impartial and respects the consumer's right to privacy. See CC §1785.1. The Act also applies to those who use the reports issued by regulated agencies in situations in which the report is used adversely to the consumer (CC §§1785.20–1785.22; see §5.60) and to any person who regularly engages in the practice of providing information on checking account experiences of consumer customers of banks and other financial institutions with certain exceptions. CC §1785.5. It also applies to an organization that gathers information on residential renters and sells the information to potential landlords. *Cisneros v U.D. Registry, Inc.* (1995) 39 CA4th 548, 562–564, 46 CR2d 233. Any waiver of the provisions of the Act is contrary to public policy, and is void and unenforceable. CC §1785.36.

The small claims court judge will rarely see cases brought under this Act because the remedies a consumer will ordinarily seek under the Act are beyond the jurisdiction of the small claims court. See §5.55.

A consumer credit reporting agency is any person or entity that assembles or evaluates credit information on consumers in order to furnish consumer credit reports to third parties. CC §1785.3(d).

The Act does not apply to

- Reports containing information solely as to transactions or experiences between the consumer and the person making the report. CC §1785.3(c).
- Any communication regarding transactions between the consumer and the person making the report or internal communications within the organization making the report, provided that the consumer is advised that this information may be disclosed. CC §1785.3(c).
- Authorization or approval of a specific extension of credit by the issuer of a credit card or similar device. CC §1785.3(c).
- Reports by a person conveying a decision whether to make a specific extension of credit to a consumer in response to a third party's request, if the third party advises the consumer of the person to whom the request was made and that person makes the disclosures to the consumer required of a user under CC §1785.20. CC §1785.3(c).

- Reports containing information solely on a consumer's character, general reputation, personal characteristics, or mode of living which are obtained through personal interviews with the consumer's neighbors, friends, associates, or others who know the consumer. CC §1785.3(c). Investigative consumer reports are governed by CC §§1786–1786.60. See §5.55.
- Government agencies whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes. CC §1785.3(d).
- Private detectives licensed under Bus & P C §§7512–7542.1, unless employed directly by a consumer credit reporting agency. CC §1785.4.
- Reports limited to disclosures from public records relating to land and land titles. CC §1785.35.
- Persons whose records and files are primarily maintained for reporting those portions of the public records that impart constructive notice in land and land title matters. CC §1785.35.

## **2. [§5.53] Agency Requirements and Obligations**

Agencies subject to the Act must

- Make all applicable files available for inspection on the request of the consumer, and, within specified limitations, disclose the recipients of reports issued on the consumer. CC §§1785.10(a), 1785.15, 1785.17.
- Issue reports only in specified circumstances, *i.e.*, in response to a valid court order, at the consumer's written request, or to those who have a legitimate business need for the information involving the consumer. CC §§1785.11–1785.12.
- Omit from reports which are furnished for employment purposes any information regarding the age, marital status, race, color, or creed of a consumer. CC §1785.18(c).
- Issue reports containing only legally current information (*e.g.*, no bankruptcies more than 10 years old). CC §1785.13. If the report contains information based on public record, it must specify the source and be current and accurate. CC §1785.18(a), (b). Creditors and reporting agencies sometimes try to evade this rule by periodically rebilling old debts. The court should not allow such a practice.
- Provide credit scores and explanations of these scores on request. See CC §§1785.10(b), 1785.15(a)(2), 1785.15.1, 1785.15.2, 1785.16(m).
- Adopt reasonable procedures to ensure that information is current and

accurate and the users are legitimate. CC §1785.14. See *Hiemstra v TRW, Inc.* (1987) 195 CA3d 1629, 241 CR 564 (agency's practice of requiring subscribers to make a one-time general certification as to proper purpose for report requests and retaining that certification on file complied with Act; Act does not require a new certification each time a request for a credit report is made).

- Reinvestigate and record the current status of any item a consumer disputes by adding, correcting, or deleting information as necessary, and notify the consumer and specified past users of the consumer's report. If the dispute is considered frivolous, the consumer must also be notified and a statement of the consumer's position on the disputed item must be included in subsequent reports. CC §1785.16(a)–(j). The reporting agency may require that disputes by consumers be in writing. CC §1785.16(a).
- Upon written request of a consumer, create reasonable procedures to prevent information about the consumer from being provided for marketing purposes or for offers of credit not requested by the consumer. CC §1785.19.5.

The circumstances under which a consumer credit reporting agency must furnish a report are listed in CC §1785.11. A consumer may remove his or her name from the list that a consumer credit reporting agency furnishes for credit card solicitations. CC §1785.11.8.

Under CC §1785.11, a lender may request credit information about a spouse of a would-be borrower when the applicant relies on community assets to establish creditworthiness. *Olson v Six Rivers Nat'l Bank* (2003) 111 CA4th 1, 13, 3 CR3d 301.

### 3. [§5.54] User Requirements

Those who use consumer credit reports must advise the consumer whenever credit, insurance, residence rental, or employment is denied or the charge for insurance, rent, or credit is increased because of information in a report, and must disclose the source of the report. CC §§1785.20, 1785.20.5.

When a consumer credit report is requested for employment purposes, the employer must provide written notice informing the applicant that a credit report will be used and that the applicant may receive a free copy of the report if he or she desires by indicating that request on the notice which the user has provided. CC §1785.20.5.

Consumer credit report users may request that the reporting agency

investigate the current status of items in a report which are disputed by the consumer. CC §1785.21.

#### **4. [§5.55] Relief Available; Limitations**

Under CC §1785.30, a consumer may make a written demand on any person who furnished information to the reporting agency in a reinvestigation under CC §1785.16 to correct information the consumer believes to be inaccurate. The consumer may require the reporting agency during the dispute to indicate on reports that the item is in dispute, and may require the reporting agency to delete or correct the disputed item if it is found to be inaccurate or if the person on whom the demand for information was made does not respond within 90 days.

Under both the Act and the federal Fair Credit Reporting Act (see §5.65) liability is limited to consumer reporting agencies or users of information furnished by consumer reporting agencies; it does not extend to those who furnish information to a credit reporting agency. *Pulver v Avco Fin. Servs.* (1986) 182 CA3d 622, 633, 227 CR 491.

A consumer may also bring an action for a civil penalty not exceeding \$2500, as well as costs and reasonable attorneys' fees, against a person who willfully obtains access to or data from a file other than as specified in CC §1785.11, or who uses the file in a manner contrary to agreement with the consumer credit reporting agency. CC §1785.19.

A consumer who sustains damages resulting from a negligent violation of the Act, primarily the issuance of a falsely unfavorable report, is entitled to receive actual damages, including loss of wages, costs, reasonable attorneys' fees (for prevailing plaintiffs only, except as noted in CC §1785.31(e)) and, when applicable, damages for pain and suffering. CC §1785.31(a)(1), (d). If the court determines the violation was willful, it may also award punitive damages of not less than \$100 nor more than \$5000 for each violation. CC §1785.31(a)(2). The court may also award injunctive relief for any violation or threatened violation. CC §1785.31(b). If an action brought against a debt collector was found not to have been brought in good faith, the debt collector may collect reasonable attorneys' fees. CC §1785.31(e).

Except as provided in CC §1785.31, actions based on defamation, invasion of privacy, or negligence with respect to reporting of false information are barred unless malice or willful intent to injure was involved. CC §1785.32; see *Hiemstra v TRW, Inc.* (1987) 195 CA3d 1629, 241 CR 564 (summary judgment proper on cause of action for invasion of privacy when plaintiff did not allege that information contained in report was false). Generally, all actions brought under this Act must be filed within two years

from the date the plaintiff knew, or should have known, of the violation, but not more than seven years from the earliest date on which liability could have arisen. CC §1785.33. A reporting agency or user may not be sued for a violation under the Act if a federal suit on the same violation is pending, and the entry of a final judgment in a federal action for a violation is a bar to an action under the Act for the same violation. CC §1785.34.

**B. Investigative Consumer Reporting Agencies Act (CC §§1786–1786.60)**

**1. [§5.56] Purpose and Coverage of Act**

The Investigative Consumer Reporting Agencies Act regulates agencies that collect, assemble, compile, report, transmit, evaluate, transfer, or communicate information on consumers for employment and insurance purposes, and for purposes relating to the hiring of dwelling units, by ensuring that the information they issue is fair and impartial and respects the consumer's right to privacy. CC §1786. One purpose of the Act is to enable consumers to discover whether they have been the victim of identity theft. See CC §1786(c)–(e). It applies only to agencies that obtain information on a consumer's character and reputation through interviewing friends, neighbors, or associates of the consumer. CC §1786.2(c). The Act applies to an organization that gathers information on residential renters and sells the information to potential landlords. *Cisneros v U.D. Registry, Inc.* (1995) 39 CA4th 548, 562–564, 46 CR2d 233. Any person who collects, reports, transfers, or communicates information on a consumer's character, general reputation, personal characteristics, or mode of living, for employment purposes, which are matters of public record, and does not use the services of an investigative consumer reporting agency, must provide that information to the consumer. CC §1786.53. The small claims court judge will rarely see cases brought under this Act because of the amount of damages that may be awarded. See §5.59.

The Act does not apply to

- Reports that are limited to specific factual information relating to a consumer's credit record or manner of obtaining credit obtained directly from the consumer's creditor or from a consumer reporting agency when the information was obtained directly from the consumer or the consumer's potential or existing creditors. CC §1786.2(c).
- Government agencies whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes. CC §1786.2(d).
- Licensed private investigators or their employees, licensed insurance

agents, insurance brokers, solicitors, insurers, or life insurance agents. CC §1786.2(d).

- Reports limited to disclosures from public records relating to land and land titles, or issued preliminary to the issuance of a title insurance policy. CC §1786.54.
- Persons whose records are primarily maintained for reporting those portions of the public records that impart constructive notice in land and land title matters and that may be issued as the basis for the issuance of a title insurance policy. CC §1786.54.

## **2. [§5.57] Agency Requirements**

The agencies subject to the Act must

- Allow the consumer, on request, to inspect all files, except the sources (other than public records and records from databases that are for sale) used solely for the preparation of the report; these sources may only be disclosed in appropriate discovery procedures as part of ongoing litigation. See CC §1786.10(b). The recipients of reports issued within certain limited periods must also be disclosed. CC §1786.10(c), (d). See also CC §§1786.22, 1786.26.
- Provide a copy of the report to the consumer on request. CC §1786.11.
- Disclose details of checks or charges on which any adverse characterization of the consumer is based. CC §1786.10(e).
- Obtain consent from the consumer before furnishing the report to the person requesting it if the report contains medical information. CC §1786.12(f).
- Base the report on adverse information obtained from a friend, neighbor, or associate only if that person is the best source or the agency followed reasonable procedures to obtain independent confirmation. CC §1786.18(d).
- Make an inquiry of an employer or prospective employer in order to prepare a report only if that inquiry would not violate equal opportunity laws or regulations. CC §1786.20(c).
- Maintain reasonable procedures to prevent the reappearance of deleted information in a consumer file. CC §1786.24(l).
- Issue reports only in specified situations, *i.e.*, in response to a court order, lawful subpoena, on the consumer's written request, or to those the

agency reasonably believes will use the report for legitimate purposes of employment, insurance, residence rental, or governmental licensing. CC §§1786.12(a)–(e), 1786.14.

- Issue reports containing only legally current information, except in the case of certain transactions exceeding stated dollar amounts. CC §1786.18.
- Issue reports of unlawful detainer actions unless the defendant has prevailed or the case was settled. CC §1786.18(a)(4).
- Adopt reasonable procedures designed to ensure that the information in reports is current and accurate and that the users of the reports are legitimate. CC §1786.20(a)–(b). The agency must keep a record of the purposes for which information is sought, as stated by the user. It may assume that the purpose for which a user seeks information remains the same as that which a user has previously stated. It must inform the user that the user is required to notify the agency of any change in the purpose for which information will be used. CC §1786.20(a).
- Reverify adverse information from a prior report if it is used in a subsequent report, unless the adverse information in the prior report was received within three months preceding the date the subsequent report is finished. CC §1786.30.
- Reinvestigate and record the current status of any matter disputed by the consumer by adding, correcting, or deleting information as necessary, and notify the person who provided the information of the dispute within 30 days at no charge. CC §1786.24(a)–(b). If the disputed information is found to be inaccurate, the agency must notify the sources of this information of the results. CC §1786.24(e). If, however, the dispute is considered frivolous, the reinvestigation may be terminated with notice to the consumer. CC §1786.24(d).

### **3. [§5.58] User Requirements**

The Act requires users of investigative consumer reports to notify the consumer that a report will be procured, except when an employer is procuring a report because of his or her suspicion of the employee's wrongdoing or misconduct. CC §1786.16; see CC §1786.40. No agency may issue a report without receiving certification from the person requesting it. See CC §§1786.12(e), 1786.16(a)(4).

### **4. [§5.59] Relief Available**

A consumer who is damaged by a report that violates any provision of the Act may sue an agency or user for



- Actual damages or \$10,000, whichever is greater, for negligent violations, in addition to any penalty specified in CC §1786.20. CC §1786.50(a)(1).
- Punitive damages in cases of grossly negligent or willful violations. CC §1786.50(b).
- Reasonable attorneys' fees and costs. CC §1786.50(a)(2).

However, there is no liability if the agency can show that the violation resulted in a more favorable report than if the violation had not occurred. CC §1786.50(c). Generally, actions brought under this Act must be filed within two years from the date of discovery. CC §1786.52. The consumer may also bring an action for defamation or invasion of privacy. CC §1786.52.

An agency that is being sued or has been successfully sued under the federal Fair Credit Reporting Act (15 USC §§1681n, 1681o) may not be sued under this Act for the same violation. CC §1786.52(a)–(b).

### **C. The Holden Credit Denial Disclosure Act of 1976 (CC §§1787.1–1787.4)**

#### **1. [§5.60] Coverage of Act; Requirements**

Creditors who regularly extend credit or arrange for the extension of credit must, within 30 days of receipt of a written application for credit, notify the applicant of their decision. CC §1787.2(a).

If credit is denied, the consumer must be given a specific statement of reasons for the denial either orally or in writing. CC §1787.2(b).

Any waiver of the provisions of the Act is contrary to public policy, and is void and unenforceable. CC §1787.4.

#### **2. [§5.61] Remedy**

A creditor who fails to comply with the requirements of CC §1787.2 is liable for actual damages sustained by the consumer (CC §1787.3(a)) and reasonable attorneys' fees and costs (CC §1787.3(c)); in certain circumstances, the court may also award punitive damages not exceeding \$10,000. CC §1787.3(b). The consumer must bring the action within two years from the date of the violation. CC §1787.3(e).

### **D. Rosenthal Fair Debt Collection Practices Act (CC §§1788–1788.33)**

#### **1. [§5.62] Purpose and Coverage of Act**

The purpose of Rosenthal Fair Debt Collection Practices Act is to